

SUBJECT: <b>Domestic Violence</b>	NUMBER: 2-7.01
EFFECTIVE DATE:	REVIEW DATE:
NMMLEPSC STANDARDS: OPR.13.01	APPROVED: Sheriff

## **II. POLICY**

This policy establishes procedures and guidelines to be used in investigating reports of family violence. Family Violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse as is permitted by law without regard to the relationship between the alleged offender and victim. The primary objectives in responding to a domestic abuse call are to de-escalate violent situations, to render assistance to the victim, to enforce the law against violators, determine the primary aggressor and to facilitate prosecution, where applicable.

## **III. DEFINITIONS**

### **A. Domestic Abuse**

“Domestic Abuse” is Behavior used to control another person through fear and intimidation, often including the use of violence.

This can include physical violence against the intended victim (assault, battery, aggravated burglary); physical violence against others to control intended victim (child abuse, animal abuse, assault, battery); psychological violence (stalking, harassment, criminal trespass, breaking and entering); violence against property to control intended victim (CDP, criminal trespass, breaking and entering, deprivation of property against HHM); and sexual violence (CSC, CSP).

### **B. Arresting**

NMSA § 31-1-7 applies to household members defined as: a spouse, former spouse, family member, including a relative, parent, present or former step-parent, present or former in-law, child or co-parent of a child, or a person with whom the victim has had a continuing personal relationship.

Although you may ARREST under that definition, you do not CHARGE with that definition for NMSA §§ 30-3-11 through 30-3-18.

### **C. Household Member**

The definition of “household member” is a spouse, former spouse, parent, present or former step-parent, present or former parent in-law, grandparent, grandparent-in-law, a co-parent of a child or a person with whom a person has had a continuing personal relationship. A continuing personal relationship is defined as “a dating or intimate relationship.”

This means that siblings, cousins, and other extended family do not qualify for this statute. They are charged with simple assault, simple battery, etc. So you can still arrest these family members under NMSA § 31-1-7, but you cannot charge them under NMSA §§ 30-3-11 through 18.

#### D. Order of Protection

“Order of Protection” means an order issued by a N.M. State District Court Judge pursuant to the Family Violence Protection Act granted for the protection of victims of domestic abuse with a specific expiration date. Violation of an Order of Protection is a criminal offense.

If the victim wishes to seek a protective order under the Family Violence Protection Act, NMSA § 40-13-2, the new definition of “household member” is: spouse, former spouse, parent, present or former step-parent, present or former parent in-law, grandparent, grandparent-in-law, child, stepchild, grandchild, co-parent of a child or a person with whom a person has had a continuing personal relationship. A continuing personal relationship is defined as “a dating or intimate relationship.”

**PLEASE NOTE THAT IN THE CRIMES AGAINST HOUSEHOLD MEMBERS ACT, A *CHILD* IS NOT INCLUDED AS A HOUSEHOLD MEMBER.**

Consequently, if the victim of a “domestic” call is a minor child of the suspect/offender, the call will not be handled under the Crimes Against Household Member Act but will be handled as either parental discipline or abuse/neglect of a child, depending on the force used. If the victim is 18 years of age or over and the suspect/offender is a parent, the call will be handled as a battery. If the suspect/offender is the child of the victim or sibling of the victim, the domestic charge could be brought under either the Crimes Against Household Members or the Family Violence Protection Act, whichever is more appropriate.

#### E. Co-Parent

“Co-Parent” means persons who have a child in common, regardless of whether they have been married or have lived together at any time.

### **IV. DUTIES OF DEPUTIES**

- A. A Sheriff's Deputy responding to the request for assistance shall be required to identify the predominant aggressor by evaluating offensive and defensive wounds, past contacts and known information by the deputies and take whatever steps are reasonably necessary to protect the victim from further domestic abuse.
- B. Upon request of the victim of domestic abuse, arrange for transportation by private means or ambulance to a medical facility. If there is any evidence of strangulation, call EMS. Even if the victim refuses, the risk of death from tissue damage showing up hours later in the form of irreversible airways obstruction is too high to not call EMS.
- C. Upon request of the victim of domestic abuse, accompanying the victim to the victim's residence to remove the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children in the care of the victim.
- D. Advising the victim of the remedies available under the Family Violence Act/Order of Protection, filing of appropriate crime reports, procedure for obtaining a warrant and the availability of domestic violence shelters, medical care and counseling. A victim of domestic violence will be given a "Domestic Violence packet." stating the victim's rights in both English and Spanish.
- E. Deputies may arrest a person without a warrant when the deputy is at the scene or in close proximity of a domestic abuse call and has probable cause to believe that the person has committed an assault or a battery upon a household member as defined above. When an arrest is made, deputies shall charge the offender under the appropriate statute for battery and/or assault as authorized by 31-1-7, NMSA 1978. These laws can be used even when no Order of Protection exists.
- F. Advise the victim, when appropriate, of the procedure for initiating proceedings under the Family Violence Protections Act or under criminal statutes if applicable, and of the importance of preserving evidence.
- G. All responding deputies will complete an initial Incident Report on every incident of domestic disturbance they are dispatched to, regardless of whether or not an injury was sustained, an assault was committed, or enforcement action was taken.
- H. Department personnel will provide victims of domestic violence with information necessary to obtain a Family Protection Order.
- I. Deputies will assist victim(s) in obtaining an emergency order of protection under the guidelines of 40-13-3.2 NMSA 1978.
- J. Deputies will enforce the provisions of valid Orders of Protection from any state.
- K. Upon request of the petitioner, assist in placing the petitioner in possession of the dwelling or premises or otherwise assist in execution or service of the order of protection.

- L. Deputies shall enforce the provisions of custody as set forth in a valid court order, which may include removing children from the non-custodial parent or guardian.
- M. Deputies will attempt to ascertain that the order shown to them is the most current order in place. This can be accomplished by communicating with both parties that are involved or by contacting the District Court.

## **V. OFFICERS AS VICTIMS/ABUSING PARTIES**

The following procedures have been developed to ensure that department policy is applied fairly and impartially to all members of the community.

- A. When a Deputy Sheriff responds to a call of domestic abuse and finds that the offender or victim is member of the Valencia County Sheriff's Department or another law enforcement agency, the responding deputy will call the Shift Supervisor, who will in turn contact the Field Service Lieutenant. If the Field Service Lieutenant is not available then the shift supervisor will contact one of the other division commanders.
- B. If the investigation involves a member of the Valencia County Sheriff's Department, the supervisor will consult with a division commander. The decision will be made for the Sergeant to handle the investigation or for an outside agency to handle the investigation.
- C. Depending on the nature of the alleged offense and the totality of the circumstances, the deputy from the Sheriff's Department may be placed on paid or unpaid administrative leave at the discretion of the Sheriff or his designee.
- D. In the event that the deputy from the Valencia County Sheriff's Department has an order of protection placed against him / her, the deputy may be placed on administrative leave due to federal law prohibiting a person to be in possession of a firearm while having a protection order in place against them.
- E. At the discretion of the Sheriff, any Department employee involved in a domestic situation may be subject to an internal affairs

## **VI. ORDER OF PROTECTION**

A victim of domestic abuse will be instructed to petition the District Court under the Family Violence Protection Act for an Order of Protection. Deputies shall familiarize themselves with these forms and their implication in order to instruct victims of domestic abuse seeking such relief from Domestic Violence packet. If actual assistance is needed in filing out the forms, the legal advocate for the domestic violence shelter can be called to assist.

- A. Court orders may include, but are not limited to the following:
  - 1. Awarding temporary custody of the children and allowing for visitation rights and support;

2. Ordering that respondent not initiate contact with petitioner;
  3. Restraining parties from disposing of personal property other than in the course of business, as directed by the Court Order;
  4. Enforcing other injunctive relief as the Court deems necessary, including orders to law enforcement agencies;
  5. Granting sole possession of the household to petitioner during the period the Order is effective or ordering the respondent to provide temporary suitable alternative housing for petitioner and any children to whom the respondent owes a legal obligation of support.
- B. A Deputy Sheriff shall arrest without a warrant and taken into custody a person whom the deputy has probable cause to believe has violated any clauses as set forth in a valid Order of Protection. Prior to any arrests for violation of the Order of Protection, the deputy will verify whether or not the respondent has been served with a copy of the Order. The verification can be done by verifying that the order of protection is on file. Verification can also be done by contacting the Valencia County District Court.
- C. Any abusing party arrested for violation of the Order of Protection will be charged under 40-13-6(c), NMSA 1978, "Violation of Order of Protection" in Magistrate Court. A criminal complaint will be completed detailing the violations. A copy of the Order of Protection should accompany the paperwork to Magistrate Court. In addition, any additional criminal charges will be filed.
- D. If the alleged abusing party is not arrested, a report shall be filed detailing the allegations. A copy of the valid Order of Protection will be attached to the report.